

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
PLACER COUNTY WATER AGENCY  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE AMERICAN RIVER DIVISION

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 PLACER COUNTY WATER AGENCY  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM AMERICAN RIVER DIVISION

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 200\_, in  
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262~~2~~<sup>3</sup>),  
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992  
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between  
17 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and  
18 \_\_\_\_\_, hereinafter referred to as the Contractor, a public agency of  
19 the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its  
20 principal place of business in California;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
24 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
25 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
26 restoration, generation and distribution of electric energy, salinity control, navigation and other  
27 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
28 the San Joaquin River and their tributaries; and

29 [2<sup>nd</sup>] WHEREAS, the United States constructed Folsom Dam and Reservoir,

hereinafter collectively referred to as the American River facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[2.1] WHEREAS, the Auburn Dam and Reservoir proposed to be constructed by the United States as a Unit of the Central Valley Project has to date, not been constructed; and

[3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-5082A, dated September 18, 1970, as amended July 8, 1992, which established terms for the delivery to the Contractor of Central Valley Project Water from the Auburn Reservoir or other mutually agreeable locations; and

[4.1] WHEREAS, Contract No. 14-06-200-5082A, as amended, also recognizes the Contractor's right to certain flows of the American River of up to 120,000 acre-feet authorized by permits issued by the California State Water Rights Board which is now called the State Water Resources Control Board (SWRCB); and

[4.2] WHEREAS, Contract No. 14-06-200-5082A, as amended, was superseded by Amendatory Contract No. 14-06-200-5082A on February 26, 2002, to, among other things, redesignate points of diversion and eliminate the minimum payment provisions currently included in the contract; and

[4.3] Amendatory Contract No. 14-06-200-5082 was further amended on August 27, 2002 to provide for a potential point of diversion on the Sacramento River, and to provide for a potential increase in the annual quantity provided under this contract to 35,000 acre-feet;

[4.4] Amendatory Contract No. 14-06-200-5082A, as amended on February 26, 2002 and August 27, 2002, is hereinafter referred to as the Existing Contract; and

[5<sup>th</sup>] Omitted; and

[6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and existing long-term Central Valley Project Water service contracts following

1 completion of appropriate environmental documentation, including a programmatic  
2 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act  
3 analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the  
4 potential renewal of all existing contracts for Project Water; and

5 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
6 environmental review necessary to provide for long-term renewal of the Existing Contract; and

7 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
8 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws  
9 of the State of California, for water service from the Central Valley Project; and

10 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
11 of its obligations under the Existing Contract; and

12 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
13 Contracting Officer that the Contractor has demonstrated projected future demand for water use  
14 such that the Contractor has the capability and expects to utilize fully for reasonable and  
15 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
16 and

17 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
18 by urban and agricultural areas within California for more than fifty (50) years, and is considered  
19 by the Contractor as an essential portion of its water supply; and

20 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
21 including the Contractor's, depend upon the continued availability of water, including water  
22 service from the Central Valley Project; and

23 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
24 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
25 Project for all Project purposes; and

26 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to

1 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to  
2 achieve repayment of the Central Valley Project as required by law; to guard reasonably against  
3 Central Valley Project Water shortages; to achieve a reasonable balance among competing  
4 demands for use of Central Valley Project Water; and to comply with all applicable  
5 environmental statutes, all consistent with the legal obligations of the United States relative to  
6 the Central Valley Project; and

7 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
8 relationship in order to achieve their mutual goals; and

9 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, which  
10 has the co-equal objectives to (1) provide a reliable and safe water supply for the Sacramento  
11 region's economic health and planned development through the year 2030, and (2) preserve the  
12 fishery, wildlife, recreational and aesthetic values of the lower American River; and

13 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the  
14 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate  
15 actions that they could take to implement the objectives of the Water Forum Agreement, which,  
16 if agreed to, would be the subject of a separate agreement between them; and

17 [16<sup>th</sup>] WHEREAS, the contract between the United States and the Contractor dated  
18 February 20, 1963 relating to the operation of the Contractor's Middle Fork American River  
19 Project Reservoirs is still in full force and effect and is not affected by the terms and conditions  
20 of this contract; and

21 [17<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
22 long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set  
23 forth below;

24 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
25 contained, it is hereby mutually agreed by the parties hereto as follows:

26 DEFINITIONS

1           1.       When used herein unless otherwise distinctly expressed, or manifestly  
2 incompatible with the intent of the parties as expressed in this Contract, the term:

3                   (a)       “Calendar Year” shall mean the period January 1 through December 31,  
4 both dates inclusive;

5                   (b)       “Charges” shall mean the payments required by Federal Reclamation law  
6 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
7 annually by the Contracting Officer pursuant to this Contract;

8                   (c)       “Condition of Shortage” shall mean a condition respecting the Project  
9 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
10 Contract Total;

11                  (d)       “Contracting Officer” shall mean the Secretary of the Interior’s duly  
12 authorized representative acting pursuant to this Contract or applicable Reclamation law or  
13 regulation;

14                  (e)       “Contract Total” shall mean the maximum amount of water to which the  
15 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

16                  (f)       “Contractor's Service Area” shall mean the area to which the Contractor is  
17 permitted to provide Project Water under this Contract as described in Exhibit “A” attached  
18 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
19 without amendment of this Contract;

20                  (g)       “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
21 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

22                  (g.1)      “Diversion Water” shall mean American River water to which the  
23 Contractor has acquired rights thereto under Permit Nos. 13855, 13856, 13857, and 13858 issued  
24 by the California State Water Rights Board, now referred to as the State Water Resources  
25 Control Board;

26                  (h)       “Eligible Lands” shall mean all lands to which Irrigation Water may be

delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(i) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(j) “Full Cost Rate” shall mean ~~that water~~ an annual rate, ~~described in Sections 205(a)(3) or 202(3) of the RRA, which ever is applicable~~ determined by the Contracting Officer that amortizes the expenditures for construction properly allocable to the Project Irrigation or M&I functions, as appropriate, of facilities in service including operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The full-cost rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the RRA;

(k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the RRA;

(l) “Irrigation Full Cost Water Rate” shall ~~have the same meaning as “full cost” as that term is used in paragraph (3) of Section 202 of the RRA~~ mean the Full Cost Rate applicable to the delivery of Irrigation Water;

(m) “Irrigation Water” shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;



(o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

(p) “M&I Full Cost Water Rate” shall mean the ~~annual rate, which, as determined by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in service, including, O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law with interest accruing from the dates such costs were first incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended. O&M charges required under Federal Reclamation law shall be collected in addition to the M&I Full Cost Water Rate~~ Full Cost Rate applicable to the delivery of M&I Water;

(q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable care, control, operation, repair, replacement (other than Capital replacement), and maintenance of Project facilities;

(r) Omitted;

(s) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) “Project Contractors” shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

1 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
2 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
3 accordance with the terms and conditions of water rights acquired pursuant to California law;

4 (v) "Rates" shall mean the payments determined annually by the Contracting  
5 Officer in accordance with the then current applicable water ratesetting policies for the Project,  
6 as described in subdivision (a) of Article 7 of this Contract;

7 (w) "Recent Historic Average" shall mean the most recent five (5)-year  
8 average of the final forecast of Water Made Available to the Contractor pursuant to this Contract  
9 or its preceding contract(s);

10 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
11 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
12 through any agency of the Department of the Interior;

13 (y) "Tiered Pricing Component" shall be the incremental amount to be paid  
14 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

15 (z) "Water Delivered" or "Delivered Water" shall mean Project Water  
16 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
17 Officer;

18 (aa) "Water Made Available" shall mean the estimated amount of Project  
19 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
20 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

21 (bb) "Water Scheduled" shall mean Project Water made available to the  
22 Contractor for which times and quantities for delivery have been established by the Contractor  
23 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

24 (cc) "Year" shall mean the period from and including March 1 of each  
25 Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 200\_, through February 28 (29), 20\_\_\_. In the event the Contractor wishes to renew the Contract beyond February 28 (29), 20\_\_\_, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

(b) (1) Under terms and conditions of a renewal contract that are mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of twenty-five (25) years.

(2) The conditions which must be met for this Contract to be renewed are: (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the

1 Contractor is complying with all terms and conditions of this Contract; and (vi) the  
2 Contractor has the physical and legal ability to deliver Project Water.

3 (3) The terms and conditions of the renewal contract described in subdivision  
4 (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent  
5 with the parties' respective legal rights and obligations, and in consideration of all  
6 relevant facts and circumstances, as those circumstances exist at the time of renewal,  
7 including, without limitation, the Contractor's need for continued delivery of Project  
8 Water; environmental conditions affected by implementation of the Contract to be  
9 renewed, and specifically changes in those conditions that occurred during the life of the  
10 Contract to be renewed; the Secretary's progress toward achieving the purposes of the  
11 CVPIA as set out in Section 3402 and in implementing the specific provisions of the  
12 CVPIA; and current and anticipated economic circumstances of the region served by the  
13 Contractor.

14 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the  
15 Contractor, shall be renewed for a period of ~~twenty five (25)~~ \_\_\_\_ years<sup>1</sup> and thereafter shall be  
16 renewed for successive periods of up to forty (40) years each, which periods shall be consistent  
17 with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable  
18 to the parties and consistent with federal and state law. The Contractor shall be afforded the  
19 opportunity to comment to the Contracting Officer on the proposed adoption and application of  
20 any revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would  
21 limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I  
22 Water to less than ~~twenty five (25)~~ 40 years.

23 (d) The Contracting Officer shall make a determination 10 years after the date  
24 of execution of this Contract, and every 5 years thereafter during the term of this Contract, of  
25 whether a conversion to a contract under said subsection 9(d) can be accomplished pursuant to

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<sup>1</sup> To be completed consistent with the term agreed upon with other CVP M&I Long-Term Renewal Contracts.

1 the Act of July 2, 1956 (Public Law 643). Notwithstanding any provision of this Contract, the  
2 Contractor reserves and shall have all rights and benefits under Public Law 643. The  
3 Contracting Officer anticipates that ~~by December 31, 2024~~ during the term of this contract, all  
4 authorized Project construction expected to occur will have occurred, and on that basis the  
5 Contracting Officer agrees ~~by that date~~ upon such completion to allocate all costs that are  
6 properly assignable to the Contractor, and agrees further that, at any time after such allocation is  
7 made, and subject to satisfaction of the conditions set out in this subdivision of this Article, this  
8 Contract shall, at the request of the Contractor, be converted to a contract under subsection (c)(1)  
9 of Section 9, of the Reclamation Project Act of 1939, subject to applicable Federal law and under  
10 stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A  
11 condition for such conversion to occur shall be a determination by the Contracting Officer that,  
12 account being taken of the amount credited to return by the Contractor as provided for under  
13 Federal Reclamation law, the remaining amount of construction costs assignable for ultimate  
14 return by the Contractor can probably be repaid to the United States within the term of a contract  
15 under said subsection 9(c)(1). If the remaining amount of costs that are properly assignable to  
16 the Contractor cannot be determined ~~by December 31, 2024~~ during the term of this Contract, the  
17 Contracting Officer shall notify the Contractor, and provide the reason(s) why such a  
18 determination could not be made. Further, the Contracting Officer shall make such a  
19 determination as soon thereafter as possible so as to permit, upon request of the Contractor and  
20 satisfaction of the conditions set out above, conversion to a contract under said subsection  
21 9(c)(1). In the event such determination of costs has not been made at a time which allows  
22 conversion of this Contract during the term of this Contract or the Contractor has not requested  
23 conversion of this Contract within such term, the parties shall incorporate in any subsequent  
24 renewal contract as described in subdivision (c) of this Article a provision that carries forth in  
25 substantially identical terms the provisions of this subdivision (d). ~~In the event the Contracting~~  
26 ~~Officer is able to make a determination of the remaining amount of costs that are properly~~

~~assignable to the Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer has such ability.~~

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 35,000 acre-feet of ~~Irrigation Water and/or M&I Water~~ water for irrigation and M&I purposes. If agreed to by the Contracting Officer and the Contractor, the 35,000 acre-feet may be increased in any renewal of this Contract (i) if and when a point of diversion for Project Water is established on the Sacramento River as described in Article 5(a); and, (ii) if and when the proposed Auburn Dam is fully completed, the United States obtains the necessary water rights for the Auburn Project, and such action continues to be consistent with Federal and State law. The Contracting Officer agrees to recognize the relevant historic relationship with the Contractor relative to water supplies contemplated from Auburn Reservoir in determining such increased amount. The quantity of Water Delivered to the Contractor in accordance with this subdivision in any Year shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(1) The Contracting Officer recognizes that the Contractor has a right to Diversion Water from the American River in the amount of 120,000 acre-feet in any Year said water is available. Said Diversion Water is in addition the Project Water made available pursuant to this contract. The quantities of Diversion Water to which the Contractor is entitled and which are not taken or otherwise disposed of by the Contractor during that Year shall become the property of the United States.

(2) The quantity of Diversion Water specified in Article 3(a)(1) above, is contingent upon the right of the Contractor to continue to take said quantity of water annually pursuant to California law. In the event that under such law the Contractor's right to take Diversion Water is less than the amount specified in Article 3(a)(1) above,

1 the amount of Diversion Water which the Contracting Officer will recognize under this  
2 amendatory contract shall be reduced accordingly.

3 (b) Because the capacity of the Central Valley Project to deliver Project Water  
4 has been constrained in recent years and may be constrained in the future due to many factors  
5 including hydrologic conditions and implementation of Federal and State laws, the likelihood of  
6 the Contractor actually receiving the amount of Water set out in subdivision (a) of this Article in  
7 any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the  
8 PEIS projected that the Contract Total set forth in this Contract will not be available to the  
9 Contractor in many years. During the most recent five (5) years, the Recent Historic Average of  
10 water made available to the Contractor was 31,000 acre-feet. Nothing in subdivision (b) of this  
11 Article shall affect the rights and obligations of the parties under any provision of this Contract.

12 (c) The Contractor shall utilize the Project Water in accordance with all  
13 applicable legal requirements.

14 (d) The Contractor shall make reasonable and beneficial use of all Project  
15 Water or other water furnished pursuant to this Contract. Ground-water recharge programs  
16 (direct, indirect, or in lieu), ground-water banking programs, surface water storage programs, and  
17 other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
18 conducted within the Contractor's Service Area which are consistent with applicable State law  
19 and result in use consistent with Federal Reclamation law will be allowed; Provided, That any  
20 direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan  
21 submitted pursuant to Article 26 of this Contract; Provided, further, That such Water  
22 Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so  
23 that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable  
24 for such uses and in compliance with Federal Reclamation Law. Ground-water recharge  
25 programs, ground-water banking programs, surface water storage programs, and other similar  
26 programs utilizing Project Water or other water furnished pursuant to this Contract conducted

1 outside the Contractor's Service Area may be permitted upon written approval of the Contracting  
2 Officer, which approval will be based upon environmental documentation, Project Water rights,  
3 and Project operational concerns. The Contracting Officer will address such concerns in  
4 regulations, policies, or guidelines.

5 (e) The Contractor shall comply with requirements applicable to the  
6 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
7 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as  
8 amended, that are within the Contractor's legal authority to implement. ~~The Contractor shall~~  
9 ~~comply with the limitations or requirements imposed by environmental documentation~~  
10 ~~applicable to the Contractor and within its legal authority to implement regarding specific~~  
11 ~~activities, including conversion of Irrigation Water to M&I Water.~~ The Existing Contract, which  
12 evidences in excess of \_\_\_\_ years of diversions for irrigation and/or municipal and industrial  
13 purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will  
14 be considered in developing an appropriate baseline for the Biological Assessment prepared  
15 pursuant to the Endangered Species Act, and any other needed environmental review. Nothing  
16 herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in  
17 a court of competent jurisdiction with respect to any biological opinion or other environmental  
18 documentation referred to in this Article.

19 (f) Following the declaration of Water Made Available under Article 4 of this  
20 Contract, the Contracting Officer will make a determination whether Project Water, or other  
21 water available to the Project, can be made available to the Contractor in addition to the Contract  
22 Total under Article 3 of this Contract during the Year without adversely impacting other Project  
23 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
24 Contractor prior to making such a determination. If the Contracting Officer determines that  
25 Project Water, or other water available to the Project, can be made available to the Contractor,  
26 the Contracting Officer will announce the availability of such water and shall so notify the



1 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor  
2 and other Project Contractors capable of taking such water to determine the most equitable and  
3 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such  
4 water, the Contracting Officer shall make such water available to the Contractor in accordance  
5 with applicable statutes, regulations, guidelines, and policies.

6 (g) The Contractor may request permission to reschedule for use during the  
7 subsequent Year some or all of the Water Made Available to the Contractor during the current  
8 Year referred to as "carryover." The Contractor may request permission to use during the  
9 current Year a quantity of Project Water which may be made available by the United States to  
10 the Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's  
11 written approval may permit such uses in accordance with applicable statutes, regulations,  
12 guidelines, and policies.

13 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
14 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract  
15 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this  
16 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all  
17 of its obligations under this Contract and any renewals thereof. Nothing in the preceding  
18 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or  
19 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal  
20 contracts.

21 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
22 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
23 Contract upon written approval by the Contracting Officer in accordance with the terms and  
24 conditions of such approval.

25 (j) The Contracting Officer shall make reasonable efforts to protect the water  
26 rights necessary for the Project and to provide the water available under this Contract. The

Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, however, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided further, that in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

#### TIME FOR DELIVERY OF WATER

(4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. ~~The~~ Such declaration of Project operations will be expressed in terms of both Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic Average. ~~The declaration of Project operations will be expressed in terms of both Water Made Available and the Recent Historic Average.~~

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the

Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at Folsom Dam and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor, including a potential point of delivery on the Sacramento River north of the American River. The parties acknowledge that the potential Sacramento River point of delivery may be at a point that, as of the date of this Contract, is not included as an authorized point of delivery under the water right permits of the Project. Project Water will not be delivered to this point of delivery unless and until such point is added to the water right permits of the Project. Upon request of the Contractor, the Contracting Officer shall petition the California State Water Resources Control Board to include the necessary point of delivery to the water rights for the Project, and the Contractor shall cooperate with and assist the Contracting Officer in prosecuting such petition in a timely manner. The Contracting Officer shall bear neither responsibility nor liability for existing and/or future constructed non-federal diversion or delivery facilities or the use thereof.

(1) The parties hereby acknowledge execution of the Stipulated Agreement dated September 8, 1998 recognizing the agreement by the United States, Bureau of Reclamation, subject to certain conditions, to dismiss protests to the Contractor's petition to expand the place of use under the Contractor's water right

1 permits.

2 (b) ~~Omitted.~~ On or before each March 1 and at such other times as  
3 necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory  
4 to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by  
5 the United States to the Contractor pursuant to this Contract for the Year commencing on such  
6 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
7 according to the approved schedule for the Year commencing on such March 1.

8 (c) The Contractor shall deliver Irrigation Water in accordance with any  
9 applicable land classification provisions of Federal Reclamation law and the associated  
10 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's  
11 Service Area unless approved in advance by the Contracting Officer.

12 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
13 measured and recorded with equipment furnished, installed, operated, and maintained by the  
14 United States or other appropriate entity as designated by the Contracting Officer (~~hereafter~~  
15 ~~"other appropriate entity"~~) at the point or points of delivery established pursuant to subdivision  
16 (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall  
17 investigate the accuracy of such measurements and shall take any necessary steps to adjust any  
18 errors appearing therein. For any period of time when accurate measurements have not been  
19 made, the Contracting Officer shall consult with the Contractor prior to making a final  
20 determination of the quantity delivered for that period of time.

21 (e) The Contracting Officer shall not be responsible for the control, carriage,  
22 handling, use, disposal, or distribution of ~~Project~~ Water Delivered to the Contractor pursuant to  
23 this Contract beyond the delivery points specified in subdivision (a) of this Article. The  
24 Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
25 account of damage or claim of damage of any nature whatsoever for which there is legal  
26 responsibility, including property damage, personal injury, or death arising out of or connected

1 with the control, carriage, handling, use, disposal, or distribution of such ~~Project~~ Water Delivered  
2 beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions  
3 of the Contracting Officer or any of its officers, employees, agents, or assigns with the intent of  
4 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting  
5 Officer or any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting  
6 Officer or any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting  
7 from a malfunction of facilities owned and/or operated by the United States.

8 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

9 6. (a) ~~By (6 months after execution);~~ The Contractor shall ensure that, unless the  
10 Contractor establishes an alternative measurement program satisfactory to the Contracting  
11 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area  
12 is measured at each agricultural turnout and such water delivered for ~~municipal and industrial~~  
13 M&I purposes is measured at each ~~municipal and industrial~~ M&I service connection. The water  
14 measuring devices or water measuring methods of comparable effectiveness must be acceptable  
15 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
16 maintaining and repairing all such measuring devices and implementing all such water  
17 measuring methods at no cost to the United States. The Contractor shall use the information  
18 obtained from such water measuring devices or water measuring methods to ensure its proper  
19 management of the water, to bill water users for water delivered by the Contractor; and, if  
20 applicable, to record water delivered for ~~municipal and industrial~~ M&I purposes by customer  
21 class as defined in the Contractor's water conservation plan provided for in Article 26 of this  
22 Contract. Nothing herein contained, however, shall preclude the Contractor from establishing  
23 and collecting any charges, assessments, or other revenues authorized by California law. The  
24 Contractor shall include a summary of all its annual surface water deliveries in the annual report  
25 described in subdivision (c) of Article 26.

26 (b) To the extent the information has not otherwise been provided, upon

1 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
2 report describing the measurement devices or water measuring methods being used or to be used  
3 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the  
4 ~~municipal and industrial~~ **M&I** service connections or alternative measurement programs  
5 approved by the Contracting Officer, at which such measurement devices or water measuring  
6 methods are being used, and, if applicable, identifying the locations at which such devices and/or  
7 methods are not yet being used including a time schedule for implementation at such locations.  
8 The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the  
9 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring  
10 methods identified in the Contractor's report and if the Contracting Officer does not respond in  
11 such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that  
12 the measuring devices or methods are inadequate, the parties shall within sixty (60) days  
13 following the Contracting Officer's response, negotiate in good faith the earliest practicable date  
14 by which the Contractor shall modify said measuring devices and/or measuring methods as  
15 required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

16 (c) All new surface water delivery systems installed within the Contractor's  
17 Service Area after the effective date of this Contract shall also comply with the measurement  
18 provisions described in subdivision (a) of this Article.

19 (d) The Contractor shall inform the Contracting Officer and the State of  
20 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
21 within the Contractor's Service Area during the previous Year.

22 (e) The Contractor shall inform the Contracting Officer on or before the  
23 twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation and M&I Water taken  
24 during the preceding month.

#### 25 RATES AND METHOD OF PAYMENT FOR WATER

26 7. (a) The Contractor shall pay the United States as provided in this Article for

1 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in  
2 accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and  
3 the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be  
4 amended, modified, or superseded only through a public notice and comment procedure; (ii)  
5 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)  
6 other applicable provisions of this Contract. Payments shall be made by cash transaction, wire  
7 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the  
8 Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the  
9 Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised  
10 annually.

11 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
12 and Tiered Pricing Components as follows:

13 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
14 provide the Contractor an estimate of the Charges for Project Water that will be applied  
15 to the period October 1, of the current Calendar Year, through September 30, of the  
16 following Calendar Year, and the basis for such estimate. The Contractor shall be  
17 allowed not less than two (2) months to review and comment on such estimates. On or  
18 before September 15 of each Calendar Year, the Contracting Officer shall notify the  
19 Contractor in writing of the Charges to be in effect during the period October 1 of the  
20 current Calendar Year, through September 30, of the following Calendar Year, and such  
21 notification shall revise Exhibit "B."

22 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
23 shall make available to the Contractor an estimate of the Rates and Tiered Pricing  
24 Components for Project Water for the following Year and the computations and cost  
25 allocations upon which those Rates are based. The Contractor shall be allowed not less  
26 than two (2) months to review and comment on such computations and cost allocations.

1 By December 31 of each Calendar Year, the Contracting Officer shall provide the  
2 Contractor with the final Rates and Tiered Pricing Components to be in effect for the  
3 upcoming Year, and such notification shall revise Exhibit "B."

4 (c) At the time the Contractor submits the initial schedule for the delivery of  
5 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
6 Contractor shall make an advance payment to the United States equal to the total amount payable  
7 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
8 scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of  
9 the Year. Before the end of the first month and before the end of each calendar month thereafter,  
10 the Contractor shall make an advance payment to the United States, at the Rate(s) set under  
11 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
12 during the second month immediately following. Adjustments between advance payments for  
13 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
14 the following month; Provided, That any revised schedule submitted by the Contractor pursuant  
15 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
16 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
17 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such  
18 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
19 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
20 additional Project Water shall be delivered to the Contractor unless and until an advance  
21 payment at the Rates then in effect for such additional Project Water is made. Final adjustment  
22 between the advance payments for the Water Scheduled and payments for the quantities of Water  
23 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
24 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water  
25 carried over under subdivision (f~~g~~) of Article 3 of this Contract if such water is not delivered by  
26 the last day of February.



1           (d)     The Contractor shall also make a payment in addition to the Rate(s) in  
2     subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
3     appropriate Tiered Pricing Component then in effect, before the end of the month following the  
4     month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
5     Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be  
6     consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the  
7     water delivery report for the subject month prepared by the Contracting Officer. The water  
8     delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered  
9     Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of  
10    Charges shall be made through the adjustment of payments due to the United States for Charges  
11    for the next month. Any amount to be paid for past due payment of Charges and the Tiered  
12    Pricing Component shall be computed pursuant to Article 20 of this Contract.

13           (e)     The Contractor shall pay for any Water Delivered under subdivision (d),  
14    (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
15    applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
16    policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
17    Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
18    under subdivision (a) of this Article.

19           (f)     Payments to be made by the Contractor to the United States under this  
20    Contract may be paid from any revenues available to the Contractor.

21           (g)     All revenues received by the United States from the Contractor relating to  
22    the delivery of Project Water or the delivery of non-Project water through Project facilities shall  
23    be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
24    regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

25           (h)     The Contracting Officer shall keep its accounts pertaining to the  
26    administration of the financial terms and conditions of its long-term contracts, in accordance

1 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
2 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
3 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
4 disposition of all Project and Contractor revenues, and a summary of all water delivery  
5 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
6 to resolve any discrepancies or disputes relating to accountings, reports, or information.

7 (i) The parties acknowledge and agree that the efficient administration of this  
8 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
9 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,  
10 and/or for making and allocating payments, other than those set forth in this Article may be in  
11 the mutual best interest of the parties, it is expressly agreed that the parties may enter into  
12 agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
13 this Contract is in effect without amending this Contract.

14 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
15 exceed eighty (80%) percent of the Contract Total, then before the end of the month  
16 following the month of delivery the Contractor shall make an additional payment to the  
17 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing  
18 Component for the amount of Water Delivered in excess of eighty (80%) percent of the  
19 Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall  
20 equal the one-half of the difference between the Rate established under subdivision (a) of  
21 this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
22 whichever is applicable. The Tiered Pricing Component for the amount of Water  
23 Delivered which exceeds ninety (90%) percent of the Contract Total shall equal the  
24 difference between (i) the Rate established under subdivision (a) of this Article and (ii)  
25 the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is  
26 applicable.

1                   (2)     Subject to the Contracting Officer's written approval, the  
2     Contractor may request and receive an exemption from such Tiered Pricing Components  
3     for Project Water delivered to produce a crop which the Contracting Officer determines  
4     will provide significant and quantifiable habitat values for waterfowl in fields where the  
5     water is used and the crops are produced; Provided, That the exemption from the Tiered  
6     Pricing Components for Irrigation Water shall apply only if such habitat values can be  
7     assured consistent with the purposes of CVPIA through binding agreements executed  
8     with or approved by the Contracting Officer prior to use of such water.

9                   (3)     For purposes of determining the applicability of the Tiered Pricing  
10    Components pursuant to this Article, Water Delivered shall include Project Water that the  
11    Contractor transfers to others but shall not include Project Water transferred and  
12    delivered to the Contractor.

13                  (k)     For the term of this Contract, Rates under the respective ratesetting  
14    policies will be established to recover only reimbursable ~~"operation and maintenance"~~ O&M  
15    (including any deficits) and capital costs of the Project, as those terms are used in the then-  
16    current Project ratesetting policies, and interest, where appropriate, except in instances where a  
17    minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes  
18    of significance in practices which implement the Contracting Officer's ratesetting policies will  
19    not be implemented until the Contracting Officer has provided the Contractor an opportunity to  
20    discuss the nature, need, and impact of the proposed change.

21                  (l)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
22    CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
23    adjusted upward or downward to reflect the changed costs, (if any), incurred by the Contracting  
24    Officer in the delivery of the transferred Project Water to the transferee's point of delivery in  
25    accordance with the then applicable CVP Ratesetting Policy. If the Contractor is receiving lower  
26    Rates and Charges because of inability to pay and is transferring Project Water to another entity

1 whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for  
2 transferred Project Water shall be the Contractor's Rates and Charges unadjusted for inability to  
3 pay.

4 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
5 Officer is authorized to adjust determinations of ability to pay every five (5) years.

6 (n) The Contractor asserts that it is not legally obligated to repay any Central  
7 Valley Project deficits or deficit related interest charges claimed by the United States to have  
8 accrued as of the date of this Contract. By entering into this Contract, the Contractor does not  
9 waive any legal rights or remedies that it may have with respect to such disputed issues.  
10 Notwithstanding the execution of this Contract, and payments made hereunder, the Contractor  
11 may challenge in the appropriate administrative or judicial forums: (1) the computation, or  
12 imposition of any deficit charges accruing during the term of the Existing Contract; (2) interest  
13 accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the  
14 Rates; (4) the application by the United States of payments made by the Contractor under its  
15 Existing Contract; and (5) the application of such payments in the Rates. The Contracting  
16 Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial  
17 ruling in favor of any other Central Valley Project M&I contractor on any of these issues,  
18 provided that the basis for such ruling is applicable to the Contractor.

19 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

20 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
21 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
22 shall have no further liability therefor.

23 SALES, TRANSFERS, OR EXCHANGES OF WATER

24 9. (a) The right to receive Project Water provided for in this Contract may be  
25 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
26 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

1 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
2 Water under this Contract may take place without the prior written approval of the Contracting  
3 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
4 exchanges shall be approved absent ~~compliance with~~ all appropriate environmental  
5 documentation, including but not limited to documents prepared pursuant to the National  
6 Environmental Policy Act and the Endangered Species Act. Such environmental documentation  
7 should include, as appropriate, an analysis of ground-water impacts and economic and social  
8 effects, including environmental justice, of the proposed water transfers on both the transferor  
9 and transferee.

10 (b) In order to facilitate efficient water management by means of water  
11 transfers of the type historically carried out among Project Contractors located within the same  
12 geographical area and to allow the Contractor to participate in an accelerated water transfer  
13 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,  
14 all necessary environmental documentation including, but not limited to, documents prepared  
15 pursuant to the National Environmental Policy Act and the Endangered Species Act analyzing  
16 annual transfers within such geographical areas and the Contracting Officer shall determine  
17 whether such transfers comply with applicable law. Following the completion of the  
18 environmental documentation, such transfers addressed in such documentation shall be  
19 conducted with advance notice to the Contracting Officer, but shall not require prior written  
20 approval by the Contracting Officer. Such environmental documentation and the Contracting  
21 Officer's compliance determination shall be reviewed every five (5) years and updated, as  
22 necessary, prior to the expiration of the then-existing five (5)-year period. All subsequent  
23 environmental documentation shall include an alternative to evaluate not less than the quantity of  
24 Project Water historically transferred within the same geographical area.

25 (c) For a water transfer to qualify under subdivision (b) of this Article, such  
26 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3)

1 years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not  
2 lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water  
3 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a  
4 willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
5 construction or modifications to facilities and be between existing Project Contractors and/or the  
6 Contractor and the United States, Department of the Interior; and (v) comply with all applicable  
7 Federal, State, and local or tribal laws and requirements imposed for protection of the  
8 environment and Indian Trust Assets, as defined under Federal law.

9 (d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of  
10 the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the  
11 Contracting Officer acknowledges that the Contractor is within a county, watershed or other area  
12 of origin, as those terms are utilized under California law, of water that constitutes the natural  
13 flow of the American River and its tributaries above the confluence of the American and  
14 Sacramento Rivers.

#### 15 APPLICATION OF PAYMENTS AND ADJUSTMENTS

16 10. (a) The amount of any overpayment by the Contractor of the Contractor's  
17 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
18 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
19 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
20 of a refund, any amount of such overpayment at the option of the Contractor, may be credited  
21 against amounts to become due to the United States by the Contractor. With respect to  
22 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
23 anyone having or claiming to have the right to the use of any of the Project Water supply  
24 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
25 days of the Contracting Officer obtaining direction as to how to credit or refund such  
26 overpayment in response to the notice to the Contractor that it has finalized the accounts for the

1 Year in which the overpayment was made.

2 (b) All advances for miscellaneous costs incurred for work requested by the  
3 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs  
4 when the work has been completed. If the advances exceed the actual costs incurred, the  
5 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
6 advances, the Contractor will be billed for the additional costs pursuant to Article 25 of this  
7 Contract.

8 TEMPORARY REDUCTIONS--RETURN FLOWS

9 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
10 requirements of Federal law; and (ii) the obligations of the United States under existing  
11 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting  
12 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as  
13 provided in this Contract.

14 (b) The Contracting Officer may temporarily discontinue or reduce the  
15 quantity of Water Delivered to the Contractor as herein provided for the purposes of  
16 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or  
17 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
18 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary  
19 discontinuance or reduction, except in case of emergency, in which case no notice need be given;  
20 Provided, That the United States shall use its best efforts to avoid any discontinuance or  
21 reduction in such service. Upon resumption of service after such reduction or discontinuance,  
22 and if requested by the Contractor, the United States will, if possible, deliver the quantity of  
23 Project Water which would have been delivered hereunder in the absence of such discontinuance  
24 or reduction.

(c) The United States reserves the right to all seepage and return flow water  
derived from Water Delivered to the Contractor hereunder which escapes or is discharged

beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right as seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this long-term renewal Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) In any Year in which there may occur a shortage for any of the reasons specified in subdivision (b) above, the Contracting Officer shall apportion the available Project Water supply among the Contractor and others entitled, under existing contracts and future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the contractual obligations of the United States.

(d) Project Water furnished under this ~~Amendatory~~ Contract, ~~and any renewals thereof~~, will be allocated in accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superseded only through a public notice and comment procedure.

UNAVOIDABLE GROUNDWATER PERCOLATION



1           13. To the extent applicable, the Contractor shall not be deemed to have delivered  
2 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such  
3 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result  
4 of the delivery of Irrigation Water by the Contractor to Eligible Lands.

5                                   RULES AND REGULATIONS  
6

7           14. The parties agree that the delivery of Irrigation Water or use of Federal facilities  
8 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the  
9 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and  
10 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation  
11 law.

12                                   WATER AND AIR POLLUTION CONTROL

13           15. The Contractor, in carrying out this Contract, shall comply with all applicable  
14 water and air pollution laws and regulations of the United States and the State of California, and  
15 shall obtain all required permits or licenses from the appropriate Federal, State, or local  
16 authorities.

17                                   QUALITY OF WATER

18           16. (a) Project facilities used to deliver Project Water to the Contractor pursuant  
19 to this Contract shall be operated and maintained to enable the United States to deliver Project  
20 Water to the Contractor in accordance with the water quality standards specified in subsection  
21 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October  
22 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no  
23 obligation to construct or furnish water treatment facilities to maintain or to improve the quality  
24 of Water Delivered to the Contractor pursuant to this Contract. The United States does not  
25 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

26                   (b) The ~~Operation and Maintenance~~ **O&M** of Project facilities shall be  
27 performed in such manner as is practicable to maintain the quality of raw water made available  
28 through such facilities at the highest level reasonably attainable as determined by the Contracting

Officer. The Contractor shall be responsible for compliance with all State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor's Service Area.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

17. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such

1 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982  
2 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land  
3 within the Contractor's Service Area that receives non-Project water through Federally financed  
4 or constructed facilities. The incremental fee calculation methodology will continue during the  
5 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or  
6 policy adopted after the Contractor has been afforded the opportunity to review and comment on  
7 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall  
8 supersede this provision.

9 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
10 other than from the United States ~~or adverse to the Project or its contractors (i.e., non-Project~~  
11 ~~Water)~~, may be stored, conveyed, and/or diverted through Project facilities, subject to the  
12 completion of appropriate environmental documentation, with the approval of the Contracting  
13 Officer and the execution of any contract determined by the Contracting Officer to be necessary,  
14 consistent with the following provisions:

15 (1) The Contractor may introduce non-Project water into Project  
16 facilities and deliver said water to lands within the Contractor's Service Area, including  
17 Ineligible Lands, subject to payment to the United States of an appropriate rate as  
18 determined by the CVP Ratesetting Policy and the Reclamation Reform Act of 1982,  
19 each as amended, modified, or superceded from time to time. In addition, if electrical  
20 power is required to pump non-Project water through the facilities, the Contractor shall  
21 be responsible for obtaining the necessary power and paying the necessary charges  
22 therefor.

23 (2) Delivery of such non-Project water in and through Project facilities  
24 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
25 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of  
26 water available to other Project water service contractors; (iii) interfere with the delivery

1 of contractual water entitlements to any other Project water service contractors; or (iv)  
2 interfere with the physical maintenance of the Project facilities.

3 (3) The United States shall not be responsible for control, care, or  
4 distribution of the non-Project water before it is introduced into or after it is delivered  
5 from the Project facilities. The Contractor hereby releases and agrees to defend and  
6 indemnify the United States and their respective officers, agents, and employees, from  
7 any claim for damage to persons or property, direct or indirect, ~~resulting from~~  
8 ~~Contractor's diversion or extraction of non-Project Water from any source~~ arising out of  
9 or relating to the Contractor's or its officers', employees', agents' or assigns', act of (i)  
10 extracting or diverting non-Project water from any source, or (ii) diverting such non-  
11 Project water into Project facilities.

12 (4) Diversion of such non-Project water into Project facilities shall be  
13 consistent with all applicable laws, and if involving groundwater, consistent with any  
14 applicable ground-water management plan for the area from which it was extracted.

15 (5) After Project purposes are met, as determined by the Contracting  
16 Officer, the United States and the Contractor shall share priority to utilize the remaining  
17 capacity of the facilities declared to be available by the Contracting Officer for  
18 conveyance and transportation of non-Project water prior to any such remaining capacity  
19 being made available to non-Project contractors.

#### 20 OPINIONS AND DETERMINATIONS

21 18. (a) Where the terms of this Contract provide for actions to be based upon the  
22 opinion or determination of either party to this Contract, said terms shall not be construed as  
23 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
24 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
25 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
26 or unreasonable opinion or determination. Each opinion or determination by either party shall be

1 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is  
2 intended to or shall affect or alter the standard of judicial review applicable under Federal law to  
3 any opinion or determination implementing a specific provision of Federal law embodied in  
4 statute or regulation.

5 (b) The Contracting Officer shall have the right to make determinations  
6 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
7 laws of the United States and of the State of California, and the rules and regulations  
8 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
9 with the Contractor to the extent reasonably practicable.

#### 10 COORDINATION AND COOPERATION

11 19. (a) In order to further their mutual goals and objectives, the Contracting  
12 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
13 with other affected Project Contractors, in order to improve the operation and management of the  
14 Project. The communication, coordination, and cooperation regarding operations and  
15 management shall include, but not be limited to, any action which will or may materially affect  
16 the quantity or quality of Project Water supply, the allocation of Project Water supply, and  
17 Project financial matters including, but not limited to, budget issues. The communication,  
18 coordination, and cooperation provided for hereunder shall extend to all provisions of this  
19 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,  
20 and determinations to be made by the respective party.

21 (b) Within one hundred twenty (120) days following the effective date of this  
22 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall  
23 arrange to meet with interested Project Contractors to develop a mutually agreeable, written  
24 Project-wide process, which may be amended as necessary separate and apart from this Contract.  
25 The goal of this process shall be to provide, to the extent practicable, the means of mutual  
26 communication and interaction regarding significant decisions concerning Project operation and

1 management on a real-time basis.

2 (c) In light of the factors referred to in subdivision (b) of Article 3 of this  
3 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this  
4 intent:

5 (1) The Contracting Officer will, at the request of the Contractor,  
6 assist in the development of integrated resource management plans for the Contractor.  
7 Further, the Contracting Officer will, as appropriate, seek authorizations for  
8 implementation of partnerships to improve water supply, water quality, and reliability.

9 (2) The Secretary will, as appropriate, pursue program and project  
10 implementation and authorization in coordination with Project Contractors to improve the  
11 water supply, water quality, and reliability of the Project for all Project purposes.

12 (3) The Secretary will coordinate with Project Contractors and the  
13 State of California to seek improved water resource management.

14 (4) The Secretary will coordinate actions of agencies within the  
15 Department of the Interior that may impact the availability of water for Project purposes.

16 (5) The Contracting Officer shall periodically, but not less than  
17 annually, hold division level meetings to discuss Project operations, division level water  
18 management activities, and other issues as appropriate.

19 (d) Without limiting the contractual obligations of the Contracting Officer  
20 under the other Articles of this Contract, , nothing in this ~~Contract~~ Article shall be construed to  
21 limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate  
22 with the Contractor or other interested stakeholders or to make decisions in a timely fashion as  
23 needed to protect health, safety, physical integrity of structures or facilities. ~~Nothing in this~~  
24 ~~Article shall be construed to limit or constrain the Contracting Officer's ability to comply with~~  
25 ~~applicable laws.~~

26 CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

## EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of

September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

22. (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance



1 payment of water rates levied or established by the Contractor.

2 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
3 obligation to require advance payment for water rates which it levies.

4 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

5 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
6 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
7 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
8 laws, as well as with their respective implementing regulations and guidelines imposed by the  
9 U.S. Department of the Interior and/or Bureau of Reclamation.

10 (b) These statutes require that no person in the United States shall, on the  
11 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
12 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
13 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
14 Contractor agrees to immediately take any measures necessary to implement this obligation,  
15 including permitting officials of the United States to inspect premises, programs, and documents.

16 (c) The Contractor makes this agreement in consideration of and for the  
17 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
18 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
19 Reclamation, including installment payments after such date on account of arrangements for  
20 Federal financial assistance which were approved before such date. The Contractor recognizes  
21 and agrees that such Federal assistance will be extended in reliance on the representations and  
22 agreements made in this Article, and that the United States reserves the right to seek judicial  
23 enforcement thereof.

24  
25 PRIVACY ACT COMPLIANCE

26 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
27 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
28 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
29 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation  
30 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

31 (b) With respect to the application and administration of the criminal penalty  
32 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees  
33 responsible for maintaining the certification and reporting records referenced in (a) above are  
34 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1 (c) The Contracting Officer or a designated representative shall provide the  
2 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau  
3 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--  
4 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of  
5 information contained in the Landholder's certification and reporting records.

6 (d) The Contracting Officer shall designate a full-time employee of the  
7 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions  
8 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The  
9 Contractor is authorized to grant requests by individuals for access to their own records.

10 (e) The Contractor shall forward promptly to the System Manager each  
11 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed  
12 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System  
13 Manager with information and records necessary to prepare an appropriate response to the  
14 requester. These requirements do not apply to individuals seeking access to their own  
15 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the  
16 requester elects to cite the Privacy Act as a basis for the request.

#### 17 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

18 25. In addition to all other payments to be made by the Contractor pursuant to this  
19 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
20 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
21 specific items of direct cost incurred by the United States for work requested by the Contractor  
22 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
23 Reclamation policies and procedures. All such amounts referred to in this Article shall not  
24 exceed the amount agreed to in writing in advance by the Contractor. This Article shall not  
25 apply to costs for routine contract administration.

#### 26 WATER CONSERVATION

27 26. (a) Prior to the delivery of water provided from or conveyed through  
28 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
29 shall be implementing an effective water conservation and efficiency program based on the  
30 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
31 the conservation and efficiency criteria for evaluating water conservation plans established

1 under Federal law. The water conservation and efficiency program shall contain definite water  
2 conservation objectives, appropriate economically feasible water conservation measures, and  
3 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
4 Contract shall be contingent upon the Contractor's continued implementation of such water  
5 conservation program. In the event the Contractor's water conservation plan or any revised water  
6 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not  
7 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which  
8 the Contracting Officer determines are beyond the control of the Contractor, water deliveries  
9 shall be made under this Contract so long as the Contractor diligently works with the Contracting  
10 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
11 immediately begins implementing its water conservation and efficiency program in accordance  
12 with the time schedules therein.

13 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
14 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
15 Contractor shall implement the Best Management Practices identified by the time frames issued  
16 by the California Urban Water Conservation Council for such M&I Water unless any such  
17 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

18 (c) The Contractor shall submit to the Contracting Officer a report on the  
19 status of its implementation of the water conservation plan on the reporting dates specified in the  
20 then existing conservation and efficiency criteria established under Federal law.

21 (d) At five (5)-year intervals, the Contractor shall revise its water  
22 conservation plan to reflect the then current conservation and efficiency criteria for evaluating  
23 water conservation plans established under Federal law and submit such revised water  
24 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
25 will then determine if the water conservation plan meets Reclamation's then current conservation  
26 and efficiency criteria for evaluating water conservation plans established under Federal law.

(e) If the Contractor is engaged in direct ground-water recharge, such activity shall be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

28. Omitted.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

BOOKS, RECORDS, AND REPORTS

30. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

(b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or other information shall be requested from the Contractor by the Contracting

Officer unless such books, records, or information are reasonably related to the administration or performance of this Contract. Any such request shall allow the Contractor a reasonable period of time within which to provide the requested books, records, or information.

(c) Omitted.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

(b) The assignment of any right or interest in this Contract by either party shall not interfere with the rights or obligations of the other party to this Contract absent the written concurrence of said other party.

(c) The Contracting Officer shall not unreasonably condition or withhold his approval of any proposed assignment.

SEVERABILITY

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the

provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

### RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30)-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

### OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

### CHANGES IN CONTRACTOR'S SERVICE AREA

35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this

1 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
2 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
3 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
4 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
5 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
6 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
7 with Article 25 of this Contract.

#### 8 FEDERAL LAWS

9 36. By entering into this Contract, the Contractor does not waive its rights to contest  
10 the validity or application in connection with the performance of the terms and conditions of this  
11 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
12 the terms and conditions of this Contract unless and until relief from application of such Federal  
13 law or regulation to the implementing provision of the Contract is granted by a court of  
14 competent jurisdiction.

#### 15 NOTICES

16 37. Any notice, demand, or request authorized or required by this Contract shall be  
17 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
18 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom  
19 California 95630-1777, and on behalf of the United States, when mailed, postage prepaid, or  
20 delivered to the Board of Directors of the Placer County Water Agency, P.O. Box 6570, Auburn,  
21 California 95604. The designation of the addressee or the address may be changed by notice  
22 given in the same manner as provided in this Article for other notices.

#### 23 CONFIRMATION OF CONTRACT

24 38. The Contractor, after the execution of this Contract, shall promptly seek to secure  
25 a decree of a court of competent jurisdiction of the State of California, confirming the execution  
26 of this Contract. The Contractor shall furnish the United States a certified copy of the final

- 1 decree, the validation proceedings, and all pertinent supporting records of the court approving
- 2 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
- 3 the Contractor.



IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
the day and year first above written.

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

PLACER COUNTY WATER AGENCY

By: \_\_\_\_\_  
President of the Board of Directors

Attest:

By: \_\_\_\_\_  
Secretary of the Board of Directors

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B  
2003 Water Rates and Charges  
CONTRACT NUMBER: 14-06-200-5082A-LTR1  
PLACER COUNTY WATER AGENCY

	2003 Rates Per Acre-Foot	
	<u>Irrigation</u>	<u>M&amp;I</u>
COST-OF-SERVICE (COS) RATE: (1 <sup>st</sup> Tier - ≤80% of Contract Total)	\$7.12	\$0.00
2ND TIER [>80% <90% of Contract Total] (Sec. 202(3) Full Cost Rate + COS Rate/ 2)	\$7.34	\$0.00
3RD TIER [> 90% of Contract Total] (Sec. 202(3) Full Cost Rate)	\$7.56	\$0.00
FULL-COST RATES: RRA Section 202(3) rate is applicable to Qualified Recipients or to Limited Recipients receiving irrigation water on or before October 1, 1981	\$7.56	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND* Restoration Payments [3407(d)(2)(A)]	\$7.69	

\* The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30).

Note: Additional detail of rate components is available on the Internet at <http://www.mp.usbr.gov/cypwaterrates/>.